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NOVELLUS SYSTEMS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

NOVELLUS SYSTEMS, INC.,

Defendant.

Case No. 07-CV-4787 JW (RS)

**DEFENDANT'S ANSWER TO FIRST
AMENDED COMPLAINT**

COMES NOW Defendant NOVELLUS SYSTEMS, INC. ("Novellus" or
"Defendant") and answer Plaintiff Equal Employment Opportunity Commission's ("Plaintiff") First
Amended Complaint as follows:

JURISDICTION AND VENUE

1. Answering paragraph 1, Defendant admits that the cited statutory references
state what they state. Defendant also admits that this Court has jurisdiction over the subject matter
of this action. Except as expressly admitted herein, Defendant denies the allegations contained in
paragraph 1.

2. Answering paragraph 2, Defendant admits that its principal place of business,
and the workplace of charging party Michael Cooke, is located in San Jose, California, which is in
Santa Clara County, California and, thus, within the jurisdiction of the United States District Court

ANSWER TO COMPLAINT(NO. 07-CV-4787
JW (RS))

1 for the Northern District of California (San Jose Division). Except as expressly admitted herein,
 2 Defendant denies the allegations contained in paragraph 2.

3 3. Answering paragraph 3, Defendant admits venue is proper in this Court.
 4 Except as expressly admitted herein, Defendant denies the allegations contained in paragraph 3.

5 **PARTIES**

6 4. Answering paragraph 4, Defendant asserts that the allegations in paragraph 4
 7 are legal conclusions and therefore do not require a response.

8 5. Defendant admits the allegations contained in paragraph 5.

9 6. Defendant admits the allegations contained in paragraph 6.

10 **STATEMENT OF CLAIMS**

11 7. Answering paragraph 7, Defendant admits that Mr. Cooke filed a charge with
 12 the EEOC more than 30 days prior to the date the EEOC filed its complaint. Except as expressly
 13 admitted herein, Defendant denies the allegations contained in paragraph 7.

14 8. Defendant denies all the allegations contained in paragraph 8.

15 9. Defendant denies all the allegations contained in paragraph 9.

16 10. Defendant denies all the allegations contained in paragraph 10.

17 11. Answering paragraph 11, Defendant admits Plaintiff's employment was
 18 terminated on October 15, 2004. Except as expressly admitted herein, Defendant denies the
 19 allegations contained in paragraph 11.

20 12. Defendant denies the allegations contained in paragraph 12.

21 13. Defendant denies all the allegations contained in paragraph 13.

22 14. Defendant denies all the allegations contained in paragraph 14.

23 **AFFIRMATIVE DEFENSES**

24 1. Plaintiff's complaint fails to state facts sufficient to constitute any action or to
 25 set forth a claim upon which relief can be granted.

26 2. To the extent Charging Party Michael Cooke has suffered any damages, which
 27 Defendant denies, he has failed to mitigate his damages.

28 3. Plaintiff's claims are barred, in whole or part, by the statute of limitations.

1 4. Plaintiff failed to adequately comply with the statutory prerequisites to
2 bringing this action, including the requirement that it endeavor in good faith to eliminate alleged
3 unlawful employment practices by informal methods of conference, conciliation and persuasion as
4 required by Section 706 of Title VII.

5 5. Plaintiff's claims are barred, in whole or in part, because the employment
6 actions complained about were taken for legitimate, non-retaliatory business reasons.

7 6. Pleading in the alternative, and without waiving Plaintiff's burden to prove
8 that alleged adverse employment actions were motivated by impermissible factors, Defendant would
9 have taken the same action in the absence of the alleged impermissible motivating factors.

10 7. Plaintiff's claims are barred in whole or in part for failure to exhaust
11 administrative remedies.

12 8. Defendant is not liable for any intentional, wrongful acts or any malicious acts
13 allegedly committed by its employees or agents.

14 9. Plaintiff's claims are barred by the doctrine of laches.

15 10. Defendant is not liable for punitive damages because neither it, nor its
16 officers, directors or managing agents committed any knowing, wanton, intentional, recklessly
17 indifferent or malicious act, and because Defendant did not authorize or ratify any such act.

18 11. Defendant is not liable for punitive damages because Plaintiff has failed to
19 plead facts supporting such damages with particularity.

20 12. Defendant avers that all of its actions were taken in good faith and it did not
21 know or believe that any of its actions violated federal law.

22 13. Plaintiff's claim is barred by the doctrine of estoppel.

23 14. Defendant at all times exercised reasonable care to prevent and promptly
24 correct any harassing, discriminatory or retaliatory behavior, and Charging Party Cooke
25 unreasonably failed to take advantage of Defendant's preventative or corrective opportunities or to
26 otherwise avoid harm.

27 15. Defendant reserves the right to amend its Answer to raise additional defenses
28 that may become available during the discovery process.

WHEREFORE, Defendant prays that:

1. Plaintiff's Complaint be dismissed with prejudice;
2. Plaintiff take nothing by way of its Complaint;
3. Defendants be awarded attorneys' fees and costs of suit herein; and
4. For such other and further relief as the Court deems proper.

Dated: February 14, 2008

/s/

JOHN C. KLOOSTERMAN
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NOVELLUS SYSTEMS, INC.